

UNION PACIFIC RAILROAD COMPANY

LAW DEPARTMENT
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February 23, 2001

RECEIVED
FEB 27 2001

Ms. June Tate
Hearing Examiner
Illinois Commerce Commission
160 North LaSalle Street
Room C-800
Chicago, IL 60601-3104

Illinois Commerce Commission
RAIL SAFETY SECTION

Late Filed Exhibit

RE: City of Crystal Lake v. UP
T00-0110

Dear Judge Tate:

In accordance with our telephone conversation, please find attached hereto for filing in the above-referenced matter a photocopy of the fully-executed Landscape Beautification Lease between the Union Pacific Railroad Company and the City of Crystal Lake, Illinois. Please refer to the last page of the Lease entitled Specifications. At Paragraph 2, the underlined section is additional language that was added at the request of the City of Crystal Lake regarding trees adjacent to a City Park that are located on railroad property. These trees are located approximately 200 feet perpendicular to the railroad right-of-way and behind the existing depot structure. Therefore, as testified to at the hearing, these trees do not pose a visual obstruction at the railroad crossings beyond that which is created by the depot building itself. If the Commission concurs with this position, it is specifically requested that the order reflect the specific modification regarding the trees referenced in Paragraph 2 of the Specifications Exhibit.

Respectfully,

Mack H. Shumate, Jr.
Senior General Attorney

Attachment

cc (w/att.): Ryan J. Schmidt, Esq.
Bob Berry, ICC Railroad Staff

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DOCKETED

SPECIFICATIONS

Unless otherwise modified by Order of the Illinois Commerce Commission:

1. No planting or other landscaping material shall be allowed within 16 feet of the edge of the nearest tie nor allowed to grow into this zone other than grass or ground cover, which will not grow in excess of three (3) feet in height.
2. Any planting or other landscape material done on the railroad right-of-way within 500 feet of any grade crossing shall be maintained so as not to exceed a height of three (3) feet. If so ordered by the Illinois Commerce Commission, the existing trees located on railroad right-of-way approximately 200 feet perpendicular to the existing trackage and behind the existing depot do not have to have additional trimming because they do not cause any additional obstruction.
3. Any grading or future planting done on Company's property must be approved in writing by Company's Engineering Department located at 500 West Madison, Suite 3610, Chicago, Illinois 60661.
4. Any work done on Company's property closer than 16 feet from the edge of the nearest tie will require a flagman provided by Company at Lessee's expense.
5. There is to be no interference with Company facilities, including pole lines, drainage structures and signal apparatus.
6. There is to be no adverse effect to visibility or drainage on Company property.
7. Lessee shall not construct or permit to be constructed any building, structure, excavation or any other obstruction without the written consent of Company's Engineering Department.
8. The Union Pacific Railroad Company will not, in any way, share in the cost of landscaping or for any improvements to the area covered by this lease.
9. The Union Pacific Railroad Company will not be responsible for any damage to the landscaping or improvements.

Exhibit E

RAILROAD RIGHT-OF-WAY LANDSCAPE BEAUTIFICATION LEASE

UNION PACIFIC RAILROAD COMPANY (hereinafter called "Company") hereby leases to the CITY OF CRYSTAL LAKE, MC HENRY COUNTY, ILLINOIS (hereinafter called "Lessee") to use for planting, pruning and otherwise maintaining landscaping ("Landscape Beautification") the Union Pacific right-of-way in Crystal Lake, Illinois, shown in red on Exhibit B, attached hereto and hereby made a part hereof (the "Premises"), subject to the express terms and conditions of this Lease, the Specifications (the "Specifications") attached hereto as Exhibit A and hereby made a part hereof. This Lease (the "Lease") shall become effective Jan 10, 2001, 1999 and shall run for a period of one year and thereafter unless terminated as hereinafter provided.

Lessee agrees to pay Company as rent for the Premises the sum of TEN AND NO/100 DOLLARS (\$10.00) per year payable annually in advance. Nothing herein shall limit or modify the terms and conditions of any other agreement between Company and Lessee for use of Company's right-of-way or any portion of the Premises for other than Landscape Beautification.

This Lease is given upon the following express terms and conditions herein and the Specifications and should the Lessee at any time violate any of said terms or conditions, or use or attempt to use the Premises for any other or different purpose than that stated herein, then the Company may, at its option, immediately terminate this Lease.

As a material consideration for entering into this Lease and without which Company would not enter into same, Lessee covenants and agrees to indemnify, save harmless and protect the Company and the Commuter Rail Division of the Regional Railway Authority ("Metra") from and against any and all loss, damage, injury, claim, demand, fine, lawsuit, judgment and/or liability, and any and all costs, expenses and legal fees in connection therewith by reason of injuries to or death of persons and/or loss of or damage to property and/or violation of any law, ordinance or regulation ("Claim") to the extent such Claim arises out of or is connected with Lessee's Landscape Beautification of the Premises or any act or omission of (i) Lessee, its officers, employees, contractors, or agents, and/or (ii) and other person(s) performing any work or service for or on behalf of the Lessee on or about said Premises or arising out of their presence on said Premises. Notwithstanding the foregoing, Lessee shall not be obligated to indemnify and hold harmless Company and Metra for

personal injury, death and/or property damage to the extent arising out of the acts or omissions of the Company, Metra or the officers, employees, agents or contractors of either the Company or Metra.

Company reserves the right to use, occupy and enjoy the Premises and its tracks, property and right-of-way, for such purpose, in such manner, and at such time as it shall desire, the same as if this instrument had not been executed by it, including the right to lease or license any of the Premises for commercial or industrial purposes without any prior notification to Lessee.

Lessee accepts the Premises subject to the rights of any party, including Company, in and to any existing roadway, easements, permits or licenses. Lessee further accepts the Premises subject to rights of any party, including Company, in and to any existing telephone, telegraph, or other wires, and poles and facilities of any kind whatsoever, whether or not of record.

Company reserves the right to maintain or relocate its existing facilities, or to construct and thereafter maintain new facilities, in the vicinity of the Premises with no liability for damages to Lessee's interests or Premises resulting from such beautification activities.

Lessee recognizes and assumes all responsibility for all present and future environmental liability or responsibility imposed under applicable environmental laws, regulations or any other similar requirements relating to any contamination of the Premises or groundwater thereunder or discharge or release to adjacent property arising from or in any respect aggravated or altered by any operations or activities by, or any equipment or facilities used by or permitted on the Premises by Lessee in performance of Landscape Beautification (the foregoing hereinafter referred to as "Lessee Landscape Beautification Operations"). Lessee, therefore, agrees to indemnify and hold harmless Company, its officers, agents, and employees from any and all liability, fines penalties, claims, demands, loss or lawsuits brought by any third party or governmental agency under any theory of law against Company seeking to hold Company liable for any investigation, response or cleanup costs, penalties or damages, whether personal property or environmental, for any contamination of any property or groundwater thereunder or discharge or release to adjacent property arising out of or in any respect aggravated or altered by Lessee Landscape Beautification Operations. Lessee agrees that the above indemnity extends to any liability resulting from or arising out of Lessee's implementation of any investigation, response or cleanup plan approved by the United States Environmental

Protection Agency or companion state agency. Lessee further agrees to undertake at its own expense any investigation, response or cleanup of any contamination of the Premises and groundwater thereunder arising from or in any respect aggravated or altered by any Lessee Landscape Beautification Operation and to promptly notify Company of any event, notice, claim, demand or litigation which involves or alleges contamination of the Premises, the groundwater thereunder or a discharge or release therefrom to adjacent property. The Lessee is not responsible for any environmental contamination of the Premises that occurred prior to the execution of this Lease. Lessee agrees to waive any and all statutes of limitations applicable to any controversy or dispute arising out of this paragraph, and Lessee further agrees that it will not raise or plead a statute of limitations defense against Company in any action arising out of Lessee's failure to comply with this paragraph.

Company, its agents, employees and authorized contractors shall have the right to enter the Premises or any part thereof, at all reasonable hours, for the purpose of inspecting the Premises to determine if Lessee is complying with all terms and conditions of this Lease and/or to determine through inspection and/or testing if any hazardous condition, pollution or contamination is present or threatened. Lessee agrees to cooperate with Company in any such inspection and to provide at Company's request any and all permits, reports, or records of any kind, relating to any materials used, stored, treated or disposed of on the Premises.

Either party hereto shall have the right at any time to cancel this Lease by giving ten (10) days' notice in writing. At the expiration for the time limited by said notice, the Lessee shall promptly, and in the manner directed by Company, restore the Premises to the condition it was in prior to the leasing of same. Upon default of the Lessee to do so, the Company may accomplish the same and so restore the Premises, and the Lessee will promptly pay to the Company for the cost and expense of such restoration. In addition, at termination Lessee shall provide evidence, reasonably satisfactory to Company, that the condition of the Premises and all improvements thereon attributable to the acts and/or omissions of Lessee during the term of this Lease comply with all applicable laws, regulations and standards.

IN WITNESS WHEREOF, the parties have executed these presents
on Jan 10, 1999-2001

UNION PACIFIC RAILROAD COMPANY

CITY OF CRYSTAL LAKE

By: James L. Harrel

By: Ray Monroe

Title: SR 16R - Real Estate

Title: City Manager

(Municipal Seal)

Municipal Clerk

By: James B. Kelby

Title: City Clerk

Resolution/Ordinance number

99R-61

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